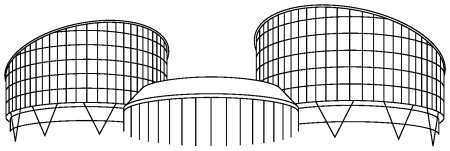

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PUGŽLYS v. POLAND

(Application no. 446/10)

JUDGMENT

STRASBOURG

14 June 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pugžlys v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 24 May 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 446/10) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Juozas Pugžlys ("the applicant"), on 13 November 2009.

2. The applicant was represented by Mr L. Belevičius, a lawyer practising in Vilnius. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs. The Lithuanian Government did not make use of their right to intervene (Article 36 § 1 of the Convention).

3. The applicant alleged, in particular, that the "dangerous detainee" regime had been imposed on him for a period of nine years, that during his trial court hearings he had been kept in a metal cage, and that his court-appointed lawyer spoke no Lithuanian. The applicant also complained about restrictions on his contact with his family.

4. On 7 July 2014 the complaints under Article 3 about the "dangerous detainee" regime and being placed in a cage, handcuffed, during court hearings, under Articles 6 and 13 about lack of fair trial and effective remedy, under Article 6 § 3 (b), (c), (e) about the right to an interpreter and respect for his defence rights, and under Article 8 about restriction on contact with his family were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and is detained in the Suwałki Prison.

6. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Criminal proceedings against the applicant (case no. IVK 338/06)

7. On 30 April 2003 the Suwałki Regional Prosecutor's Office issued an arrest warrant against the applicant on suspicion of his being the leader of an international organised criminal group and six counts of kidnapping for ransom committed by members of that group. On the same day the Suwałki District Court issued a decision ordering the applicant's detention on remand, relying on the reasonable suspicion that he had committed the offences in question. It attached great weight to the possibility that the applicant might attempt to obstruct the proceedings by bringing pressure to bear on witnesses and other suspects.

8. On 22 April 2003 the applicant was arrested in the Netherlands.

9. The extradition request, arrest warrant and detention order were sent to the Netherlands. The applicant was transferred to Poland on 20 October 2003.

10. On 8 April 2004 the Suwałki Regional Prosecutor indicted the applicant before the Augustów District Court. The case was later transferred to the Lublin Regional Court.

11. The applicant's appeal against the detention order, his further appeals against subsequent decisions extending his detention, and all his subsequent applications for release and appeals against refusals to release him, were unsuccessful.

12. In the meantime, in another set of criminal proceedings, on 1 April 2005, the Suwałki Regional Court convicted the applicant of armed robbery and sentenced him to four years and six months' imprisonment (II K 96/04). The judgment was upheld on appeal. He served this sentence from 21 January 2006 until 20 July 2010.

13. The bill of indictment was first lodged with the Augustów District Court, which declared itself not competent to deal with the case on 14 April 2004. The case was then transferred to the Lublin District Court, where the trial commenced on 21 September 2004. The court held many hearings and heard witnesses. On 26 January 2006 the prosecutor submitted a request for the case to be transferred to the Lublin Regional Court. Following various appeals and challenges, on 26 September 2006 the Warsaw Court of Appeal finally decided that the Lublin Regional Court was competent to deal with the applicant's trial. The trial commenced before the Lublin Regional Court

in December 2006. The court held at least sixty-five public hearings lasting up to four hours.

14. At the hearings before the Lublin District Court and Lublin Regional Court the applicant had the services of a Lithuanian interpreter. On a few occasions a Russian interpreter was provided as the applicant agreed that he spoke Russian well enough. On 4 January 2007 the applicant expressed his preference for a Lithuanian interpreter and one was provided until the end of the trial.

15. On numerous occasions the applicant, assisted by an interpreter, examined the file. According to the Government, the file was examined on 14 November and 2 December 2007, 3 January, 7, 17 and 31 March and 5 May 2008 at the very least. At the applicant's request the trial court provided him with translations of documents. In addition, at four hearings in 2005 the applicant requested copies of the relevant documents in Polish.

16. On 5 October 2007 the applicant asked the trial court to allocate another legal aid lawyer to him. He contended that he had argued with the incumbent lawyer and could not communicate with him. It appears that at the hearing the lawyer endorsed the request made by the applicant, but the court dismissed it.

17. At the hearing of 7 January 2009 the applicant challenged the presiding judge. However his challenge was dismissed.

18. On 27 January 2010 the Lublin Regional Court (IV Ka 338/06) convicted the applicant as charged. In particular he was convicted on six counts of kidnapping for ransom and leading an organised criminal gang. The applicant was sentenced to twelve years' imprisonment. The period of the applicant's detention from 22 April 2003 until 20 January 2006 was credited towards the sentence.

19. During the trial before the Lublin District and Regional Courts the applicant was represented by Mr M.C. a lawyer from Białystok, appointed for him by the court. The lawyer prepared an appeal on his behalf. In his appeal he raised, *inter alia*, a breach of the applicant's defence rights under Article 6 of the Convention and argued that the applicant had not had access to his lawyer in the presence of an interpreter and full access to the case file in his own language.

20. On 7 December 2010 the Lublin Court of Appeal (II AKa 235/10) upheld the conviction. The court dismissed the allegations regarding the impossibility of communicating with his lawyer, who spoke only Polish, as manifestly ill-founded. The court established that the applicant had had access to a sworn interpreter during the entire trial, including meetings with the lawyer. The appellate court also found that the applicant had not been hindered in his right of access to the case file, which he consulted on many occasions in the presence of his interpreter. The court stated:

> "During the entire proceedings the accused benefited from free counsel with whom he could communicate in the presence of an interpreter. The regional court even

> organised recesses during the hearing in order to enable the applicant to contact his lawyer in the presence of a sworn interpreter. Consequently, one cannot share the accused's allegation of a breach of Article 6 of the Convention or other provisions. Moreover, throughout the proceedings the first-instance court provided him with copies of the requested documents..."

21. A new lawyer allocated to the applicant at this stage of the proceedings, Mr A.D., lodged a cassation appeal against the judgment. He argued that the contact with the lawyer during recesses in the trial had occurred in the presence of police officers and sometimes lay judges or judges' assistants. That rendered respect for the applicant's defence rights illusory. The requests for unsupervised meetings with the lawyer in the presence of the interpreter had been dismissed by both the trial court and the court of appeal. In the cassation appeal he further argued that the trial court never actually provided the applicant with copies of the translated documents although it had agreed to do it. Moreover, the court had asked the applicant to pay for them although he did not have any financial means.

22. On 4 April 2012 the Supreme Court dismissed the applicant's cassation appeal. The translation into Lithuanian of this judgment had been received by the applicant on 7 July 2012. As regards the arguments put forward in the cassation appeal, the court stated that the applicant had been detained on remand and had therefore had to be accompanied by guards during the meetings with the lawyer which had taken place during recesses in the trial court hearing. The court further noted that the requirements of Article 6 of the Convention had been fulfilled as the applicant had had translations of the most important documents necessary for his comprehension of the case, even if not the entire file.

B. Imposition of the so-called "dangerous detainee" regime

23. On 21 October 2003 the Suwałki Remand Centre requested to classify the applicant as a so-called "dangerous detainee". In their request the authorities pointed out that the applicant had been charged with having committed several counts of kidnapping for ransom, robberies and attempted murder and of being a leader of an international, armed, criminal group. The applicant was searched by an arrest warrant and apprehended in Amsterdam. The remand centre authorities stated: "his personal situation, character and behaviour pose a serious danger to society or to the security of a remand centre". They further indicated that the security of all transfers of the applicant be strengthen "given the character and the manner in which the offences had been committed and the fact that [the applicant] had previously practiced box and combat techniques". The request ends: "He is a person of high degree of depravity".

On the same day the Lublin Remand Centre Penitentiary Commission decided to classify the applicant as a "dangerous detainee". The commission

stated that the main reason for the classification was the suspicion that the applicant had committed offences within an organised criminal group (Article 212a § 3 and §4 (c) of the Code of Execution of Criminal Sentences).

24. On an unspecified date the applicant lodged a complaint with the Lublin Regional Prison Service Inspectorate concerning the constant monitoring of his cell, repeated body searches and the lack of unsupervised visits. On 15 February 2010 the complaint was declared manifestly ill-founded.

25. Every three months the Lublin Remand Centre Penitentiary Commission reviewed and reaffirmed its decision to classify the applicant as a "dangerous detainee". The relevant decisions were limited to short descriptions of the nature of the charges laid against him, and later offences of which he had been convicted which, together with his "personal situation", justified the maintaining of the previous decisions. In the requests for extension of the regime issued prior to each decision of the commission, the director of the remand centre emphasised the violent nature of the crimes which the applicant had allegedly committed. In the requests of 19 October 2004 and 9 January 2005 the authorities referred to the applicant's "personal circumstances (ruthless and cruel manner in which the crimes were committed taken together with the knowledge of box and combat techniques)". In the more recent requests the remand centre authorities pointed out that the applicant had not taken any active part in the "social rehabilitation process" and had been of low moral character. All the commission's decisions and the requests by the remand centre issued between April 2005 and 2012 had similar wording.

26. The applicant appealed against some of those decisions. In particular, he appealed against the decision of 2 April 2009, but this was dismissed by the Lublin Regional Court on 8 June 2009. The applicant also appealed against the commission's decision of 29 April 2011 and on 6 September 2011 the Białystok Regional Court upheld it. In addition to that, the applicant submitted that he had appealed against the decision of 4 August 2011 which was dismissed on 11 October 2011. On 26 March 2012 the Białystok Regional Court dismissed his appeal against the decision of the commission issued on 27 January 2012. The domestic courts examined the legality of the impugned decisions and found that they had been given in accordance with the law and after a thorough analysis of the case. In particular due consideration had to be given to the nature of the offences allegedly committed by the applicant and of which he had been later found guilty. The courts also found that the authorities based their decisions on an exhaustive assessment of the applicant's behaviour.

27. On 25 July 2012 the Białystok Remand Centre Penitentiary Commission decided to lift the measure. The commission considered that the applicant no longer posed a threat to the security of the remand centre.

C. Restrictions on the applicant's contact with his family

28. On 11 October 2007 the Lublin Regional Court granted the applicant's request to be allowed to make phone calls from the detention centre. During his subsequent detention in the Lublin and Suwałki Remand Centres the applicant was authorised to make two telephone calls per week, each lasting ten minutes. For a short period of time in 2010 the use of telephone was limited to once a week but the call duration extended to 15 minutes.

29. In addition to that, the applicant was often granted additional telephone conversations with his family, daughter, lawyer, or diplomatic representatives. In 2010 these took place on eight occasions and in 2011 on seven occasions. At his request, on seven occasions in 2010 the authorities extended the allotted time to fifteen minutes.

30. The visits by the applicant's family, his common-law wife and daughter, were subject to restrictions, but he had been able to receive them regularly. The first visit from his common law wife took place in August 2004, followed by two other in the same year. From the list of visits submitted by the Government and not contested by the applicant, it appears that between 2004 and 2009 he had had between two and four visits every year at least. In 2010 he had in total eight visits mostly from his wife and daughter. Each visit lasted between thirty minutes and two hours.

31. The applicant was not restricted in receiving correspondence from his family.

D. Conditions in the courtroom

32. The Government acknowledged that during the hearings before the Lublin Regional Court the applicant had been held in a metal cage separating him from the judges and the public, and whilst in the cage, his hands had remained handcuffed.

33. The parties failed to provide a detailed description of the cage, in particular its dimensions. It is also not clear whether the guards were positioned inside the cage with the applicant or next to it.

34. The parties disagreed as to the number of hearings during which the applicant remained in the cage. The applicant stated that he was placed in the metal cage, with his hands and legs shackled, during all the hearings before the trial court, approximately 104 of them. The Government submitted that he was placed in the cage, handcuffed, during some hearings before the Lublin Regional Court but not all of them.

35. The Government also submitted that on 7 October 2010 the applicant received disciplinary punishment for having verbally threatened a prison guard.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. The relevant domestic law and practice concerning the imposition of the "dangerous detainee" regime and the relevant international documents are set out in the Court's judgments in the cases of *Piechowicz v. Poland* (no. 20071/07, §§ 105-117, 17 April 2012), and *Horych v. Poland* (no. 13621/08, §§ 44-56, 17 April 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE IMPOSITION OF THE "DANGEROUS DETAINEE" REGIME

37. The applicant complained that he had been unlawfully classified as a "dangerous detainee" and subjected to degrading treatment as prohibited in Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

38. The Government contested that argument.

A. Admissibility

1. The parties' submissions

39. The Government argued that the applicant had failed to make use of the available remedies in that he had not appealed against all the decisions of the penitentiary commission. He had not appealed against the first decision of the commission of 21 October 2003 imposing the regime on him, nor against the subsequent thirty-five decisions. In fact, he had appealed on only two occasions, namely against the decision of 2 April 2009 (dismissed by a court on 8 June 2009) and that of 27 January 2012 (dismissed by a court on 26 March 2012). The Government argued that the applicant had been informed on each occasion about the time-limit for lodging an appeal but had remained totally passive. They concluded that the application should be rejected for non-exhaustion of the domestic remedies.

40. The applicant disagreed and argued that his application should be considered admissible. He submitted that he had appealed against four decisions in total. The applicant argued that in the light of the Convention principles it had not been necessary for him to appeal against every decision of the commission. Moreover, he had sent letters to many institutions and organisations complaining about the breach of his rights, including the

"dangerous detainee" regime. Even if those letters to the President, the Prosecutor General and the Parliament, as well as to the international human rights organisation, could not be considered as effective remedies, they proved that he had not been passive.

2. The Court's assessment

41. The Court reiterates that although Article 35 § 1 of the Convention requires that complaints that are to be brought subsequently before the Court should first have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see *Egmez v. Turkey* no.30873/96, ECHR 2000-XII, §§ 65 et seq.).

42. In the present case the Court observes that the applicant appealed to the penitentiary commission against at least three decisions classifying him as a dangerous detainee (see the parties' disagreement on the facts in paragraphs 26, 39 and 40 above). After his last appeal had been dismissed by a court, the applicant remained classified in the regime for a further four months, after which time the penitentiary commission decided to lift the measure.

43. The Court reiterates that Article 35 of the Convention, which sets out the rule on the exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. In the present case the Court is not persuaded by the evidence provided by the Government in support of their objection.

44. In any event, in the present case the alleged non-exhaustion of domestic remedies is inseparably linked with the Court's assessment of the reasonableness of the measures complained of, and in particular with the question of whether such a lengthy imposition of the "dangerous detainee" regime on the applicant was properly justified by the authorities. In the Court's view, it would therefore be more appropriate to deal with the Government's argument at the merits stage.

45. The Court accordingly joins the Government's plea of inadmissibility on the grounds of non-exhaustion to the merits of the case (see *Romaniuk v. Poland*, no. 59285/12, § 26, 12 January 2016).

46. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant

47. The applicant submitted that such a prolonged imposition of the "dangerous detainee" regime had been in breach of Article 3 of the Convention. In his opinion, there had been no reasonable grounds for subjecting him to the regime. All decisions imposing and extending the regime had lacked justification and had not referred to any individual circumstances imputable to the applicant. The regime had been imposed arbitrarily and extended automatically. Moreover, his good behaviour in the remand centre had not been taken into account by the commission.

48. He submitted that he had been held in conditions identical to those described by the Court in the *Piechowicz* judgment, but for three times as long. He had been held in solitary confinement for almost nine years, had been isolated from the other inmates, and had had the right to one solitary walk in the prison yard per day. He further referred to the prolonged and excessive isolation from his family, the outside world and other detainees, and to other restrictions such as the wearing of "joined shackles", the routine strip-searches to which he had been subjected twice daily, and the monitoring of his cell (including the sanitary facilities) via closed-circuit television. The applicant stressed that all movement in his cell had been constantly monitored. Every time he left or entered his cell, which usually happened several times a day, he had been subjected to a degrading, exceptionally intrusive body search by two to three prison guards. That had diminished his human dignity and caused him feelings of inferiority. The applicant underlined that during the entire period that he had been subjected to the regime, no illegal material had been found in his cell during daily searches, nor had he displayed any violent or disruptive behaviour. He acknowledged one verbal incident to which he had been provoked by the behaviour of the guards. The applicant pointed out that the Government's assertions as to his alleged particular dangerousness and knowledge of combat techniques had not been supported by any evidence.

Finally, the applicant submitted that he had not used the library because there had been no books in Lithuanian and, due to the language barrier, he had been unable to watch television. He had received no psychological support.

2. The Government

49. The Government argued that in the present case the treatment complained of had not attained the minimum level of severity required under Article 3.

50. The Government maintained that the applicant had been classified as a "dangerous detainee" in accordance with the relevant legal provisions and

that the measures complained of had had a legal basis. They stated that, pursuant to Article 212(b) of the Code of Execution of Criminal Sentences, the authorities had been obliged to carry out a "strip search" of the applicant every time he left or entered his cell. They further argued that the applicant had been a violent individual suspected of many serious offences, including kidnapping for ransom and bodily harm, committed in his role as leader of an organised gang. He had been convicted of those offences. The applicant had knowledge of combat techniques and had acted aggressively towards the prison guards, for which he had been punished with disciplinary measures on one occasion.

51. The application of the "dangerous detainee" status in respect of the applicant had been reviewed every three months. As soon as the commission could see that there had been an improvement in the applicant's attitude, it lifted the regime – on 25 July 2012. In those circumstances the Government considered that subjecting the applicant to the regime had been legitimate and necessary for preventing the risk of disturbance in the prison and maintaining security within it.

52. The Government pointed out that the applicant had had the right to receive a visit from a family member or a phone call once a week. Moreover he had had the right to participate in educational and religious meetings and to practice sport. He had had access to press, radio and television and to a library. He had himself chosen to stay in a single cell even though he had been offered the possibility of sharing his cell with another detainee. The Government concluded that the treatment to which he had been subjected had not been incompatible with Article 3 of the Convention. They invited the Court to find no violation of that provision.

3. The Court's assessment

(a) General principles deriving from the Court's case-law

53. The relevant general principles deriving from its case-law were recently summarised in the Court's judgments in the cases of *Piechowicz v. Poland* (see *Piechowicz*, cited above, §§ 158-165) and *Horych v. Poland* (*Horych*, cited above, §§ 85-92).

(b) Application of the above principles in the present case

54. The Court notes that there is no dispute over the fact that from 21 October 2003 to 25 July 2012, that is to say, for over eight years and nine months, the applicant was classified as a so-called "dangerous detainee" and, in consequence, was subjected to high-security measures and various restrictions (see paragraphs 23 - 27 above). The main aspects of the regime raised by the applicant and specified below have not been contested by the Government (see paragraphs 48 and 50 above). The details of the core aspects of the "dangerous detainee" regime have also been extensively

analysed in the *Piechowicz* judgment (cited above, § 166 with further references).

55. The measures applied in the applicant's case comprised confinement in a special high-security prison wing and increased supervision of his movements inside and outside the cell, which meant that he had to wear so-called "joined shackles" (handcuffs and fetters joined together with chains) whenever he was taken outside his cell. The measures involved his segregation from the prison community and restrictions on contact with his family. Also, every time he left or entered his cell he was routinely subjected to a "full strip search" – a thorough inspection of his body and clothes in which he was required to strip naked and make deep knee bends in order to enable an examination of his anus to be conducted (see paragraph 48 above). In addition, his cell, including the sanitary facilities, was constantly monitored via closed-circuit television.

The Government did not contest those allegations. They underlined that whilst in prison the applicant had had access to facilities like a library and had been able to participate in cultural activities. Moreover, they submitted that he had had the right to receive family visits and make phone calls once a week (see paragraph 52 above).

56. The parties disagreed as to whether the adverse consequences of the imposition of the above measures on the applicant had been serious enough to attain the minimum level of severity required for a breach of Article 3 of the Convention.

57. The Court notes that the decision of 21 October 2003 imposing the "dangerous detainee" regime on the applicant was a legitimate measure, warranted by the fact that the applicant had been charged with numerous violent offences (see paragraph 23 above). It was not therefore unreasonable of the authorities to consider that, for the sake of ensuring prison security, he should be subjected to tighter security controls, involving increased and constant supervision of his movements inside and outside his cell, restrictions on his contact and communication with the outside world, and some form of segregation from the prison community.

58. However, for the reasons stated below, the Court cannot accept that the continued, routine and indiscriminate application of the full range of measures that were available to the authorities under the so-called "dangerous detainee" regime for almost nine years had been necessary in order to maintain prison security and were compatible with Article 3 of the Convention (see *Piechowicz*, cited above, § 170).

59. Although it appears that the applicant was held in a solitary cell in a special high-security wing separated from the rest of the prison, he was not subjected to complete sensory or social isolation. The Government submitted that the applicant had refused an offer to share a cell with another detainee. The applicant was allowed to receive visits from his family and make phone calls (see paragraphs 28-31 above). However, given the nature

and extent of the other restrictions, the regulated contacts with his family could not sufficiently mitigate the cumulative, adverse effects of the imposition of the "dangerous detainee" regime on the applicant.

60. It does not appear that the authorities made any effort to counteract the effects of the applicant's isolation by providing him with the necessary mental or physical stimulation, with the exception of a daily and solitary walk within the segregated area (see *Piechowicz*, cited above, §§ 172 and 173).

61. Furthermore, the Court is not convinced that shackling the applicant was necessary on each and every occasion (see *Piechowicz*, cited above, § 174).

62. The Court has even more misgivings with regard to the full body search to which the applicant was likewise subjected daily, or even several times a day, whenever he left or entered his cell. The Court has already stated in *Piechowicz* (cited above, § 176) that while strip searches might be necessary to ensure prison security or to prevent disorder or crime, it was not persuaded by the Government's argument that such systematic, intrusive and exceptionally embarrassing checks performed daily, or even several times a day, were necessary to ensure prison security. Strip searches were carried out as a matter of routine and were not linked to any specific security needs, or to any specific suspicion concerning the applicant's conduct.

63. Given that the applicant was already subjected to several other strict surveillance measures and that the authorities did not rely on any specific or genuine security-related requirements, the Court considers that the practice of daily strip searches applied to him for almost nine years must have caused him feelings of inferiority, anguish and accumulated distress which went beyond the unavoidable suffering and humiliation involved in the imposition of pre-trial detention (see *Horych*, cited above, § 101, and *Piechowicz*, cited above, §§ 175 and 176).

64. Lastly, the Court notes that when extending the regime, the commission failed to address the issue of whether any possible changes in the circumstances justifying the continued application of the regime occurred. It is apparent from the relevant decisions that, apart from the original justification, which was based essentially on the admittedly very serious nature of the charges against the applicant as well as his "personal situation", the authorities repeated the same grounds for extending the "dangerous detainee" regime (see paragraphs 25 and 47 above). The Court has already noted in previous cases that, due to the strict, rigid rules for the imposition of the special regime and the vaguely defined "particular circumstances" for discontinuing it, as laid down in Article 212a § 3 of the Code of Execution of Criminal Sentences, the authorities, in extending that regime, were not in fact obliged to take into consideration any changes in the applicant's personal situation and, in particular, the combined effects of

the continued application of the impugned measures (see *Piechowicz*, cited above, § 177).

The Court considers that in the instant case the authorities failed to sufficiently justify the extension of the regime and that the procedure for reviewing the applicant's "dangerous detainee" status was a pure formality, limited to a repetition of the same grounds.

65. In conclusion, taking into account the cumulative effect of the "dangerous detainee" regime on the applicant, the Court finds that the authorities did not provide sufficient and relevant reasons which could justify, in the circumstances of the case, the severity of the measures taken. In particular, the authorities failed to show that the impugned measures were necessary in their entirety to attain the legitimate aim of ensuring prison security.

66. There has accordingly been a violation of Article 3 of the Convention. In consequence, and particularly in the light of the findings in paragraph 64 above, the Government's preliminary objection based on non-exhaustion of domestic remedies (see paragraph 45 above) must be rejected.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF PLACING THE APPLICANT IN A METAL CAGE DURING THE HEARINGS

67. The applicant complained that his placement in a metal cage, shackled, during court proceedings constituted another violation of Article 3 of the Convention.

68. The Government contested that argument.

A. Admissibility

69. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

70. The Government acknowledged that the applicant had been placed in a metal cage, handcuffed, during some of the hearings before the Lublin Regional Court but not all of them. This measure had been justified, due to fears on the part of the accompanying guards that the applicant might be violent while in the courtroom, or attempt to escape. The authorities' safety concerns had been based on the fact that the applicant had been charged

with violent crimes committed as part of an organised criminal gang, including extortion, bodily harm and illegal imprisonment. The applicant also had knowledge of combat techniques, which made him potentially dangerous.

The Government submitted that the applicant had threatened prison guards, for which he had been punished with disciplinary measures on 7 October 2010.

71. The Government maintained that the present case differed from those previously examined by the Court in that the use of a metal cage had been justified by the applicant's violent and dangerous character. They invited the Court to find no violation of Article 3 of the Convention.

72. The applicant submitted that during all 104 hearings before the Lublin Regional Court he had been held in a metal cage. At the same time, his hands and legs had been shackled, causing him considerable discomfort during hearings lasting three to four hours. He had suffered from bruises on his hands and legs, and had not been able to stretch his legs or take notes in his own language.

73. According to the applicant the use of cage in the trial had not been regulated by any specific legal provision and it had therefore not been possible for him to appeal against it. During the hearings he made repeated requests to the presiding judge for the removal of the handcuffs and release from the cage. However, his requests were all dismissed. The applicant considered that neither the judge nor the guards had provided any reasonable justification for keeping him shackled and in the cage throughout the entire judicial proceedings. The applicant had never attempted to escape, used physical violence or shown any sign of aggression.

74. Such treatment during his trial had caused him extreme physical and psychological suffering and had deprived him of the possibility of actively participating in the proceedings against him and exercising his defence rights.

The applicant concluded that he had been kept in a metal cage, shackled, for about 400 hours of court proceedings, which amounted to torture in violation of Article 3 of the Convention.

2. The Court's assessment

75. The Court observes that the proceedings before the Lublin Regional Court lasted from 4 January 2007 to 20 January 2010 and at least sixty-five public hearings were held. The parties disagreed as to whether the applicant had been in the metal cage at all of those hearings or only at some of them (see paragraphs 34, 70 and 72 above). Each hearing lasted several hours. The parties also appear to differ as to whether the applicant remained merely handcuffed or whether his hands and his legs were shackled.

The Court thus finds it established that during at least some – and possibly all – the hearings before the trial court, the applicant was observed by the public in a metal cage wearing either handcuffs or shackles.

76. The Court notes that it has previously found a violation of Article 3 in cases in which the applicant was placed in a metal cage during court hearings (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 177, ECHR 2014 (extracts), *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 485-486, 25 July 2013, *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 126-29, 15 June 2010 and *Piruzyan v. Armenia*, no. 33376/07, § 74, 26 June 2012). Contrary to the Government's assessment, the circumstances of the present case are similar. In particular, the Lublin Regional Court gave no reasoned decision for placing and keeping the applicant in a metal cage. It is therefore impossible to establish what the court's reasons were and whether they were based on the applicant's dangerousness, his behaviour while in detention, or his alleged knowledge of combat techniques. Moreover, it appears that the Regional Court failed to take any formal decision regarding the applicant's requests for release from the cage.

77. The Court considers that such a harsh image of judicial proceedings could lead the average observer to believe that an extremely dangerous criminal was on trial. Furthermore, it agrees with the applicant that such a form of public exposure was humiliating for him in his own eyes, if not in those of the public, and aroused feelings of inferiority. Such humiliating treatment could easily have had an impact on the applicant's powers of concentration and mental alertness during proceedings bearing on such an important issue as his criminal liability (*Ashot Harutyunyan*, cited above, § 128, and *Khudoyorov v. Russia*, no. 6847/02, § 119, ECHR 2005-X (extracts)). Moreover, the fact that the impugned treatment took place in the courtroom in the context of the applicant's trial brings into play the principle of the presumption of innocence in criminal proceedings as one of the elements of a fair trial (*Svinarenko and Slyadnev*, cited above, § 131).

78. Furthermore, while in the cage, the applicant was handcuffed or even shackled (see paragraphs 70 and 72 above). The Court has previously found a violation of Article 3 in a case where the applicant, who was not a public figure, was unjustifiably handcuffed during public hearings (see *Gorodnichev v. Russia*, no. 52058/99, §§ 105-109, 24 May 2007). In the present case no specific justification of the simultaneous application of the two security measures during his trial - the cage and the handcuffs – had been provided by the authorities or the Government.

79. In the light of the foregoing considerations, the Court concludes that the imposition on the applicant of such a stringent and humiliating measures during the proceedings before the Lublin Regional Court amounted to degrading treatment. There has accordingly been a violation of Article 3 of the Convention on this account.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 6 § 3

1. The parties' submissions

80. The applicant complained that he had not been allocated a defence counsel with whom he could communicate in Lithuanian or Russian and whose pleadings he would have been able to fully understand. He submitted that the lawyer spoke only Polish and the domestic court refused his requests for the services of an interpreter during his meetings with the lawyer. As a consequence the counsel had not been able to carry out his duties properly. The applicant's requests to allocate him another lawyer had been dismissed by the trial court.

81. The Government maintained that the applicant's defence rights had been guaranteed at each stage of the domestic proceedings. He had received legal aid and his contacts with his court-appointed lawyer had not been hindered. The Government submitted that the applicant had received translated documents from his file, had regularly consulted the file in the presence of an interpreter, and on a few occasions had requested and obtained copies of documents in Polish.

2. The Court's assessment

(a) The relevant principles

82. The Court first of all observes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 52, *Reports of Judgments and Decisions* 1996-III).

83. The Court reiterates at the outset that, read as a whole, Article 6 of the Convention guarantees the right of an accused to participate effectively in a criminal trial. In general this includes not only the right to be present, but also the right to legal assistance, if necessary, and be in a position to follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c) and (e) of Article 6 § 3 (see, among other authorities, *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A).

84. Article 6 § 3 (c) cannot be interpreted as securing the right to have court-appointed defence counsel replaced (see, among other authorities, *Erdem v. Germany* (dec.), no. 38321/97, 9 December 1999). However, the appointment of a defence counsel does not necessarily settle the issue of

compliance with the requirements of Article 6 § 3 (c). Although the conduct of the defence is essentially a matter between the accused and his counsel, the competent national authorities are required to intervene if there is a manifest failure by court-appointed defence counsel to provide effective representation or if such failure is brought to their attention in some other way. Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes (see, among other authorities, *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168, and *Daud v. Portugal*, 21 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II).

(b) The application of the principles to the facts of the case

85. In the present case, the Court notes that the trial court appointed a legal aid counsel for the applicant during the initial stages of the proceedings. It was not contested between the parties that a Lithuanian interpreter had attended all the hearings. On a few occasions, with the applicant's consent, he had been replaced by a Russian interpreter (see paragraph 14 above).

86. The parties disagreed as to whether the applicant's representation could be considered adequate in view of the fact that the lawyer spoke only Polish and the applicant claimed to have no command of this language. The applicant submitted that he was not granted the opportunity to have the interpreter present during his meetings with the lawyer. The Government maintained that the interpretation assistance received by the applicant had been satisfactory. In this connection the Court notes that the applicant submitted no evidence substantiating this allegation. In particular there is no evidence that he ever requested or was refused the services of an interpreter at his meetings with the lawyer.

87. The Court notes that the interpreter assisted the applicant during his examination of the file and was present at the hearings (see paragraph 15 above). Moreover, it is evident from the reasoning of the Court of Appeal's and Supreme Court's judgments that the interpreter was also present at the meetings between the applicant and the lawyer (see paragraphs 20 and 22 above). Those meetings were organised before or during the hearings before the trial court and the applicant's lawyer was assisted by the interpreter. At the applicant's requests the trial court ordered recesses to enable him to discuss the case with his lawyer with assistance from the interpreter. In so far as it can be inferred that the applicant is complaining that the interpreter was not present when the lawyer came to see him at the remand centre, there is no evidence that a request to that effect had been made to the domestic authorities.

88. Furthermore, as established by the Lublin Court of Appeal and the Supreme Court, the applicant was allowed to make written submissions in Lithuanian to the courts which were translated and entered into the case-file.

During the trial he was very active and made many requests to adduce new evidence, which was examined by the trial court. In these circumstances, the Court considers that the interpreting assistance provided for the applicant was adequate.

89. Finally, the Court notes that the applicant appears to complain about an alleged conflict with his court-appointed lawyer Mr M. C. In this connection it is to be noted that he failed to substantiate this complaint. The applicant challenged his legal aid lawyer on one occasion in 2007 however a copy of this decision had not been provided to the Court (see paragraph 16 above). There is no appearance that he repeated his challenge later. Moreover, such complaint was not raised in the applicant's appeal or cassation appeal and the matter was not examined by the Court of Appeal or the Supreme Court.

90. The Court also observes that the applicant's court-appointed lawyer presented an appeal on his behalf and there is no *prima facie* evidence that the lawyer's representation was faulty or inadequate in any respect (see paragraph 19 above). It is to be noted that the cassation appeal was prepared on the applicant's behalf by another lawyer appointed for this purpose by the domestic court.

91. Having regard to the foregoing, the Court considers that the applicant was able to participate effectively in his trial and that, consequently, the criminal proceedings, taken as a whole, cannot be regarded as unfair (see *Lagerblom v. Sweden*, no. 26891/95, § 64, 14 January 2003).

92. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Articles 6 and 13 of the Convention

93. The applicant complained of a violation of Articles 6 and 13 of the Convention in connection with the manner in which the penitentiary commission had applied and extended the "dangerous detainee" regime in his regard, and of the alleged ineffectiveness of his appeals against the commission's decisions.

94. The Government contested that argument.

95. The Court notes that this complaint is linked to the one examined above under Article 3 of the Convention and must therefore likewise be declared admissible (see paragraph 46 above).

96. The Court observes that at the heart of the applicant's complaint under Article 3 of the Convention lies not only the prolonged imposition of the "dangerous detainee" regime but also the procedure for reviewing his status (see paragraphs 64-65 above). These issues have been examined and have resulted in the finding of a violation of that provision (see paragraph 66 above). In the circumstances, the Court considers that no separate issue arises under Articles 6 and 13 of the Convention and therefore makes no separate finding (see *Prus v Poland*, no. 5136/11, § 43, 12 January 2016).

C. Article 8 of the Convention

1. The parties' submissions

97. The applicant complained of a violation of Article 8 of the Convention as regards restrictions on contact with his family. He considered that their visits had been unduly restricted in number and in the manner in which they had taken place. In particular, permission to make telephone calls had not been given until 2007.

98. As regards the manner in which the visits were organised, the applicant submitted that he had been separated from visitors by a grille or glass partition and had had to use a telephone to communicate. The first "open visit" when the applicant was able to sit at the same table as the visitor took place in February 2007.

99. The Government submitted that the applicant had not been deprived of his right to receive visits from his family. The restrictions on the number and duration of such visits, and supervision whilst they were taking place, had been imposed in accordance with the law and had been necessary in the applicant's case. He had seen his wife and daughter regularly. Moreover, all his requests for visits from his lawyer and representatives of the Lithuanian Embassy had been granted. Since October 2007 the applicant had been allowed to make telephone calls. In general, the restrictions to which he had been subjected had been justified by the need to secure the proper course of the criminal proceedings against him in the light of the charges against him, which included leading an organised gang.

2. The Court's assessment

100. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent restrictions on that person's private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him to maintain – or, if need be, assist him in maintaining – contact with his close family (see *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X).

101. Turning to the facts of the instant case, the Court firstly notes that the applicant failed to provide copies of any decisions refusing him family visits. The Court is thus unable to establish the manner in which the authorities exercised their discretion to restrict visiting rights (see *Wegera v. Poland*, no. 141/07, §§ 74-75, 19 January 2010). It is also unknown how many requests for visits made by the applicant's family had been refused by the authorities, if there had been any.

102. It is clear from the parties' submissions that the applicant was not banned from receiving visits in prison. As regards the visits from the applicant's family, that is to say his common-law wife and daughter, the Government provided an excerpt from a prison register containing a list of visits which had taken place (see paragraph 30 above). On the basis of this document it is apparent that the applicant received visits regularly and that they each lasted from half an hour to two hours. The applicant did not contest this evidence or the Government's assertion that all requests for visits made by diplomatic representatives or his lawyer had been granted (see paragraph 99 above).

103. As regards the manner in which the visits had been supervised, the applicant stated only that the first visit which allowed psychical contact with the visitor without a partition had been in 2007. He failed to inform the Court how many of those "open visits" had taken place afterwards and what had been the authorities' justification for further restrictions, if there had been any.

104. The Court also notes that it has not been contested by the parties that since 2007 the applicant has been allowed to make regular telephone calls to his family (see paragraphs 28 - 29 above).

105. On the basis of the above the Court does not find it established that the restrictions put on the number of family visits and supervision of those visits were sufficiently excessive to amount to a breach of Article 8 of the Convention (compare and contrast *Piechowicz*, cited above §§ 219-222). It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

106. Finally, in so far as the applicant complains that before 2007 he had not been allowed to make telephone calls and that all visits had taken place in a manner preventing him from having direct contact with the visitor, the complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

108. The applicant claimed 135,000 euros (EUR) in respect of non-pecuniary damage.

109. The Government contested the claim as excessive.

110. The Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

111. The applicant also claimed EUR 579 for the costs and expenses incurred before the Court.

112. The Government contested the claim.

113. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the claimed sum in full.

C. Default interest

114. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the lengthy imposition of the "dangerous detainee" regime, placing the applicant in the cage during hearings, and the lack of fair trial and effective remedy in the proceedings before the penitentiary commission, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the lengthy imposition of a "dangerous detainee" regime on the applicant;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's placement in a metal cage during the court proceedings;

4. *Holds* that there is no need to examine the complaint under Articles 6 and 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 579 (five hundred and seventy-nine euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	András Sajó
Deputy Registrar	President